IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1665 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KHUMANSINH MANUBHA & 3 - Appellant(s)
Versus
THE STATE OF GUJARAT - Opponent(s)

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Appearance :
MR DEVENDRA K RATHOD for Appellant(s) : 1 - 4.
MR.H.L. JANI, ADDL. PUBLIC PROSECUTOR for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 07/02/2007

ORAL JUDGMENT

During the pendency of the application for delay by order dated 16.11.2006, office was directed

to call for Record & Proceedings of Sessions case No.62 of 1998 from the Court of learned Additional Sessions Judge, Gondal so as to reach to this Court on or before 01.12.2006 and the matter was ordered to be listed on 04.12.2006. It is reported that the Record & Proceedings is received. With the consent of the learned advocate for the appellant and Mr.H.L. Jani, learned APP, the matter is taken up for final disposal.

2. The present appeal is filed challenging **order dated 28.06.1999 passed by the learned Additional Sessions Judge, Gondal** in Sessions Case No.62 of 1998.

The learned Additional Sessions Judge was pleased to acquit all the accused for the offences under sections 143, 147, 148, 149, 307, 326, 324 of IPC read with sections 34 and 114 of IPC and for offence under section 25(3)(A) of the Arms Act.

The learned Sessions Judge was pleased to order that after expiry of six months from the expiry of period

of appeal, Muddamal 'Kulhadi' (axe), pipe be auctioned and the amount be deposited with the Government. The learned Judge was also pleased to order that the Muddamal gun, swords, dharia be confiscated. The learned Judge was pleased to order that the muddamal containers and clothes be destroyed in accordance with law.

3. The present appeal is filed being aggrieved by the order whereby the gun is confiscated.

4. Mr.Devendra K. Rathod, learned advocate for the appellant challenged the order mainly on three grounds:

(i)That the learned Additional Sessions Judge, Gondal did not issue any notice before passing the oder for confiscation of the gun. In this regard he relied upon section 452 of the Code of Criminal Procedure, 1973. For ready perusal section 452(1) is reproduced hereinbelow:

> “452. Order for disposal of property at conclusion of trial -- (1) When an inquiry or trial in any Criminal Court is

> concluded, the Court may make such order as it thinks fit for the disposal, by destruction, confiscation or delivery to any persons claiming to be entitled to possession thereof or otherwise, of any property or document produced before it or in its custody, or regarding which any offence appears to have been committed, or which has been used for the commission of any offence.”

The learned advocate submitted that though it is not provided in so many words in the section that the Court before passing an order has to issue notice, 'issuance of notice' should be read in between the lines and order should be quashed and set aside on the ground that the Court has not issued any notice before passing order under challenge. In this regard the learned advocate placed reliance on a decision of the Hon'ble the Apex Court in the matter of **State Bank of India Vs. Rajendra Kumar Singh and others**, reported in A.I.R. 1969 SC 401. He submitted that the Hon'ble the Apex Court has observed as under:

> “It is true that the statute does not

> expressly require a notice to be issued or a hearing to be given to the parties adversely affected. But though the statute is silent and does not expressly require issue of any notice, there is in the eye of law a necessary implication that the parties adversely affected should be heard before the Court makes an order of return of the seized property. Thus, an order of the High Court reversing the order of the Sessions Court directing disposal of property under Section 517, without giving notice to the person to whom the property is directed to be delivered by the Sessions Court, is vitiated by law. .. .. ”

Learned advocate strenuously submitted that in the case on hand, the learned Additional Sessions Judge, Gondal did not issue any notice before passing the order under challenge of confiscating the gun. He submitted that therefore, order is vitiated and the same is required to be quashed and set aside by this

Court and the learned Additional Sessions Judge is required to be directed to pass fresh order after hearing the parties.

The submission though sounds attractive, cannot be accepted. Section 452 of the Code of Criminal Procedure nowhere provides that the Court should issue a notice before passing an order contemplated under the said section. The legislation has not provided for issuing notice because the parties are already before the Court and not only that they are in know of the matter/ proceedings. An order, under sec.452 of the Code is passed on conclusion of inquiry or trial in the presence of the parties. Thus, an order, passed as required under sec.452 of the Code is always in presence of the parties, therefore, there is no question of issuing any notice before passing the same. The judgement of the Hon'ble the Apex Court on which reliance is placed by the learned advocate is also not well founded.

In the case before the Hon'ble the Apex Court, the facts were that, 'the Sessions Court had directed delivery of the property to a particular party under

sec.547 of the Code of Criminal Procedure, 1898, being aggrieved of that the matter was brought before the High Court. The High Court without issuing notice to the party in whose favour the learned Sessions Judge had passed an order, reversed the same and directed that the property be given to another party. It is in these circumstances that the Hon'ble the Apex Court observed that the High Court ought to have issued notice to the party, who was going to be adversely affected by the order of the High Court.

To read the judgement of the Hon'ble the Apex Court, to mean that the Court is required to issue notice before passing an order under section 452 (of the Code of Criminal Procedure, 1973) is nothing but a total misreading of the same. The Hon'ble the Apex Court has observed in para 4 that, 'it was only with a view to see that the principles of natural justice are not violated, the High Court was required to issue notice to the party, which was going to be adversely affected by its order.' For ready perusal the relevant part of para 4 is reproduced hereinbelow:

> “In support of this appeal, it was contended in the first place that **the High Court had reversed** the order of the Sessions Judge directing the return of the currency notes without giving a notice to the appellant and without giving an opportunity to it for being heard. The argument was stressed that there was a violation of the principle of natural justice and the order of the High Court dated 5th April 1963 was illegal. It was, however, contended on behalf of the respondents that there was no provision in Section 520 of the Code of Criminal Procedure for giving notice to the affected parties and the order of the High Court cannot be challenged on the ground that no hearing was given to the appellant. In our opinion, there is no warrant or justification for the argument advanced on behalf of the respondents. It is true that the statute does not expressly required a notice to be issued, or a hearing to be given to the parties adversely affected. But though the statute is silent and does not expressly require issue of any notice there is in the eye of law a necessary implication that the parties adversely affected should be heard before the Court makes an order for return of the seized property. .. ..”

The Hon'ble the Apex Court was dealing with the order

of the High Court which was passed by the High Court reversing the order of the learned Sessions Judge and at the time of reversing the order the High Court did not issue notice to the party which was going to be affected by the order of the High Court. It is in this background aforesaid observations were made. In view of the above, the submission of the learned advocate Mr.Rathod is rejected.

5. Learned advocate, Mr.Rathod next submitted that, 'no inquiry was conducted before passing an order under section 452'. This submission of the learned advocate is also misplaced. Section 452 does not provide for holding any inquiry. Therefore, there is no substance in the submission. The submission is rejected.

6. Last, but not the least it is submitted by the learned advocate for the appellant that the weapon which is confiscated to the Government was not used for commission of any offence.

This submission is also misplaced inasmuch as there

is no condition precedent for passing an order of confiscation that the weapon must have been used in commission of offence. Therefore, this submission is also not accepted and rejected.

7. In the present case, the order was passed by the learned Additional Sessions Judge, Gondal on 28th June 1999, confiscating the gun. This order, passed in the year 1999 was not challenged for all these years. Of late also it is challenged by the present applicants- appellants without explaining the delay. The gun belonged to the father of the present appellants, who died on 07.01.1997 after the incident which took place on 19.10.1995, wherein allegedly that weapon was used.

From the record it is clear that four sons of the deceased-Manubha were implicated in the offence, who are,

Accused no.	Name	Age
1	Ramsinh Manubha	35
7	Jalamji Manubha	48
8	Khumansinh Manubha	43
9	Harbhamji Manubha	38

8. Of these four sons, only appellant no.1 had

filed an application before District Magistrate, Rajkot for grant of permission of the gun on 07.09.2005. In the considered opinion of this Court, the appellant cannot challenge 1999 order at such a belated stage. The order was passed in presence of all concerned, which remained unchallenged till filing of this appeal.

9. It is also on record that before filing of the present appeal appellant no.1 filed an application which was dated 16th August 2005 before the District Magistrate, Rajkot seeking permission to sell weapon in question, i.e. 12 bore gun. The said application is not placed on record, nor it is made available for perusal of this Court. The said application was replied by the District Magistrate vide letter dated 07.09.2005, a copy of which is at Annexure 'B' in the Criminal Appeal. The authority has stated that no such permission can be granted to the applicant without permission of the Court.

Even thereafter, i.e. 07.09.2005 the applicants have not taken any action, until the present appeal is filed on 25th March 2006.

This shows that the appellants have approached the Court to enforce their right in a very casual way. Having found no substance in the appeal, the same is rejected.

(RAVI R. TRIPATHI, J.)

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